IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3608 of 1998
with
SPECIAL CIVIL APPLICATION No. 9291 of 1998

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD MUNICIPAL CORPORATION & 1 - Petitioner(s)

Versus

NEETA P. JADEJA - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner No(s).: 1,2. [S.C.A. No. 3608 of 1998
MR GM JOSHI for Respondent No(s).: 1.

MR GM JOSHI for Petitioner No(s).: 1, [S.C.A. No. 9291 of 1998
MR HS MUNSHAW for Respondent No(s).: 1, 2.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 16/06/2005

ORAL JUDGMENT

1. Special Civil Application No. 3608 of 1998 is filed by the Ahmedabad Municipal Corporation i.e., the employer,

[hereinafter referred to as “the Corporation”], whereas Special Civil Application No. 9291 of 1998 has been filed by the employee. Both these petitions are directed against the judgment and award dated 30th December, 1997 in Reference LCA No. 406 of 1997 passed by the Labour Court, Ahmedabad, whereby the Labour Court while partly allowing the Reference has directed the Corporation to reinstate the respondent–workman with continuity of service and without back wages and also to grant all the consequential benefits.

2. The short facts of the case are that the respondent was appointed as a Nurse w.e.f. 1st January, 1991 purely on temporary basis on a Leave Reserve Nurse. It is the case of the Corporation that the respondent-workman was continued in service depending upon the availability of the work and was provided work as and when it was available. The Corporation has further submitted that the respondent-workman had in all worked for 481 days i.e. right from 1.1.1991 to 25.4.1993. The Corporation has further submitted that since the waiting list has expire, new second waiting list was prepared in the year 1993, wherein the name of respondent-workman did not appear and, therefore, she was discontinued from the service.

2.1. On being discontinued from the service, the respondent-workman filed Reference being LCA No. 406/97, before the Labour Court, Ahmedabad, praying for reinstatement with back wages. The Labour Court after appreciating the material produced before it, partly allowed the Reference

with the aforesaid directions. Hence, this petition.

3. Mr. Munshaw learned advocate for the Corporation has submitted that the respondent-workman was appointed purely on temporary basis as a Leave Reserve Nurse. Mr. Munshaw has further submitted that the posts in the cadre of nurse were regular posts and they were required to be filled up after following the due procedure of the recruitment. He has, therefore, submitted that since the respondent-workman was appointed purely on temporary basis, and the term of the waiting list in which the name of the respondent appeared had expired, the new waiting list was prepared in the year 1993 wherein her name did not appear. Therefore, she had no right to continue in service.

4. Mr. Joshi learned advocate for the respondent-workman has submitted that in view of the fact that the respondent-workman had worked from the year 1991 to 1993, she is entitled for reemployment in view of the provisions of the Section 25-H of the Industrial Disputes Act and the Labour Court ought to have granted back wages to the respondent.

5. I have heard the learned advocates for the respective parties and have perused the relevant material on record. I am in complete agreement with the findings arrived at and reasonings given by the Labour Court. It is not in dispute that the respondent is a qualified employee and she had worked for 481 days. Therefore, in view of the provisions of Section 25-H of the Industrial Disputes Act, 1947, and

the Ahmedabad Municipal Corporation being a statutory Corporation, thus ought to have followed the provisions of the Industrial Disputes Act. Thus, the Labour Court was justified in granting reinstatement. Therefore, looking to the peculiar facts and circumstances of the case, I am of the opinion that ends of justice would be met if the respondent is granted benefit of reinstatement w.e.f. 1.1.1998 for all purposes. Further since she was relieved in the year 1993, and she had made Reference in the year 1997, the Labour Court was justified in not granting back wages.

6. For the foregoing reasons, Special Civil Application No. 9291 of 1998 is allowed. The petitioner Corporation shall grant the benefits namely the benefits granted by the Labour Court w.e.f. 1.1.1998 for all purposes. It is however, clarified that all the benefits shall be paid from the date of the reinstatement, within a period of three months from the date of receipt of writ of this order and all the consequential benefits within a period of six months thereafter. Rule is made absolute to the aforesaid extent. Consequently, Special Civil Application No. 3608 of 1998 is rejected. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]

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